

participation in and compliance with national network plans, including The National Network Security Plan and The Emergency Preparedness Plan.

26.7 Neither Party shall use any Wholesale Services, Network Elements, or other facilities services provided in this Agreement in any manner that interferes with other persons in the use of their service, prevents other persons from using their service, or otherwise impairs the quality of service to other carriers or to either Party's Customers, and either Party may discontinue or refuse service if the other Party violates this provision. Upon such violation, either Party shall provide the other Party notice, if practicable, at the earliest practicable time.

26.8 Intentionally Left Blank

26.9 Prevention of Unauthorized Use

(a) The Parties agree to cooperate to prevent, identify, and cure unauthorized use or fraud associated with clip on fraud, third-number billed calls, calling card calls, information provider calls, abuse of remote access features, off-hour abuse, network and/or PBX hacking, and viruses, and any other services related to this Agreement. The Parties shall meet at least two times a year to discuss ways to minimize or prevent unauthorized use. NYNEX shall make available any fraud or unauthorized use prevention procedures or equipment it uses to ANTC.

(b) A Party shall promptly notify the other whenever it suspects or knows of unauthorized use of Wholesale Services, Unbundled Network Elements, or any other facilities or services provided hereunder and shall assist the other in the identification of responsible individuals, the preparation and presentation of relevant information to federal, state and/or local officials for the purpose of prosecuting those individuals responsible for the unauthorized use of the Wholesale Services, Unbundled Network Elements, or any other facilities or services and in any legal actions that one or both may bring against third parties responsible for the unauthorized use of any of Wholesale Services, Unbundled Network Elements, or any other facilities or services provided hereunder. A Party shall provide, where requested and where available, any relevant call information, including the number on which the call was received, the translated number, the circuit number, the date and time of call, call duration, switch identification, and identification of trunk type.

(c) Both Parties shall use all reasonable efforts to prevent, monitor or cure unauthorized use. If a Party fails to do so and that Party had the ability to prevent the unauthorized or fraudulent use or where that Party had the responsibility to monitor, detect, or cure the unauthorized use and it failed to do so or failed to act promptly to prevent continued abuse, and where such failure

was not caused in part by the failure of the other Party to promptly give notice of information in its possession regarding the occurrence of the fraudulent or unauthorized use, then that Party shall bear the entire amount of the liability. If both Parties failed to act reasonably they shall share on a pro rata basis any financial responsibility for the unauthorized use. If the Parties are unable to agree on the appropriate financial responsibility for the unauthorized use, the Parties shall submit the matter to arbitration pursuant to Attachment ADR. Unless otherwise mutually agreed upon by the Parties, reasonable efforts shall not include the monitoring or reviewing by NYNW of call detail or other customer usage information for ANTC's customers.

(d) This Section (26.9) shall apply to all Wholesale Services, Unbundled Network Elements and other services and facilities provided in this Agreement

(e) Nothing herein shall be deemed to establish or expand the liability of either Party to any third party for unauthorized or fraudulent use.

26.10 Each Party is responsible for administering NXX codes assigned to it

26.11 Each Party is responsible for obtaining Local Exchange Routing Guide ("**LERG**") listings of **CLL** codes assigned to its switches. The Parties shall provide, upon reasonable request, listings of CLL codes assigned to its switches to the other Party.

26.12 Each Party shall use the LERG published by Bellcore or its successor for obtaining routing information and shall provide all required information to **Bellcore** for maintaining the LERG in a timely manner.

26.13 Each Party shall program and update its own Tandem Switches and End Office switches and network systems to **recognize** and route traffic to and from the other Party's assigned NXX codes. Except as mutually agreed or as otherwise expressly defined in this Agreement, neither Party shall impose any fees or charges on the other Party for **such** activities. The Parties shall use best efforts to program and promptly update their switches upon **notification by the** other Party of the assignment of NXX codes or new numbers. NYNEX will test the NXX activation through the **VETS** system and **provide** the results to ANTC. ANTC shall notify NYNEX of a failure to program and update NYNEX's Tandem Switches and End Office Switches within two (2) business days, and in the event NYNEX shall fail to take appropriate corrective action within five **(5)** business days of such notification, subject to the provisions of Sections **33.1** and **33.2**, NYNEX shall pay to ANTC five-hundred (**\$500**) per incident per affected switch. Notwithstanding the foregoing, NYNEX shall not be responsible for and shall not

be required to pay any damages to the extent the failure **is** due to PBX routing updates.

26.14 At all times during the term of this Agreement, each Party shall keep and maintain in force at each **Party's** expense all insurance required by law (**e.g.**, workers' compensation insurance) as well as general liability insurance for personal injury or death to any one person, property damage resulting from any one incident, automobile liability with coverage for bodily injury for property damage. Upon request from the other Party, each Party shall provide to the other Party evidence of **such** insurance (which may be provided through a program of self insurance).

26.15 End User Repair Calls. The Parties will employ the following procedures for handling misdirected repair calls:

26.15.1 In answering repair calls, neither Party shall make disparaging remarks about each other, nor shall they use these repair **calls** as the basis for internal referrals or to solicit customers to market services. Either Party will respond with factual information in answering customer questions.

26.15.2 Each Party will notify its Customers as to the correct telephone numbers to call in order to access its repair bureaus.

26.15.3 To the extent possible, where the correct local exchange carrier can be determined, misdirected repair calls to one Party will be immediately referred to the other Party, **as** appropriate in a courteous manner, at no charge.

26.15.4 The Parties **will** provide their respective repair contact numbers to one another on a reciprocal basis.

27.0 TERM AND TERMINATION

27.1 The initial term of this Agreement shall be three **(3)** years (the "Term") which shall **commence** on the Effective Date. Absent the receipt by one Party of written notice from the other **Party** at least sixty **(60)** Days prior to the expiration of the **Term** to the effect that **such** Party does not **intend** to extend the Term of this Agreement, provided that **such** notice cannot be served if a request to renegotiate pursuant to Section **27.1.2** has been filed, this Agreement shall automatically renew and remain in full force and effect on and after the expiration of the **Term** until **terminated by either Party as set forth below**.

27.1.1 If pursuant to Section **27.1** the Agreement continues in full force and effect after the expiration of the Term, either Party may terminate the Agreement ninety (90) Days after delivering written notice to the other Party of

the intention to terminate this Agreement, provided that such notice cannot be served if a request to renegotiate pursuant to Section **27.1.2** has been filed. In such cases, neither Party shall have any liability to the other Party for termination of this Agreement pursuant to this Section **27.1.1** other than to pay to the other Party any amounts owed under this Agreement

27.1.2

(a) Notwithstanding the provisions of Section **27.1** and **27.1.1**, either Party may, after the twenty-sixth month of the Effective Date, make a formal request to the other Party to renegotiate the terms of this Agreement pursuant to Section **251(c)(1)** of the Act. The date of the other Party's receipt of such request shall be hereinafter referred to as the 'Renegotiation Request Date.' The Parties agree that within sixty (60) Days of such Renegotiation Request Date each Party will provide to the other a written description of its proposed changes to the Agreement. The Parties shall enter into negotiations on such proposed changes no later than seventy-five (75) Days after such Renegotiation Request Date.

(b) In the event that, notwithstanding the good faith efforts of both Parties, they are unable to agree on terms and conditions of a new agreement, effective as of the expiration of this Agreement, then either Party may, beginning one-hundred thirty five (135) Days after the Renegotiation Request Date, file a petition for arbitration with the PSC pursuant to Section **252(b)** of the Act.

(c) The terms and conditions of this Agreement shall continue in full force and effect until the effective date of the PSC's decision pursuant to any petition filed under Section (b) above (the 'Arbitration Decision') if a request is made to renegotiate pursuant to Section (a) above.

(d) Nothing in this section shall be construed as a waiver by either Party of its right to appeal any decision of the PSC, including the Arbitration Decision.

27.2 Upon termination or expiration of this Agreement in accordance with this Section **27**:

(a) each Party shall comply immediately with its obligations set forth in Section **36**;

(b) each Party shall promptly pay all amounts (including any late payment charges) owed under this Agreement, except those subject to a dispute covered by Section **37.2**;

(c) each Party's indemnification obligations shall survive termination or expiration of **this** Agreement;

(d) NYNEX agrees to cooperate with ANTC and to use commercially reasonable efforts to effect an orderly and **efficient** transition to ANTC or ANTC's new vendor, subject to the payment by ANTC to NYNEX of the reasonable costs incurred in providing such cooperation. The Parties agree to cooperate to ensure **uninterrupted** service to their Customers during any transition period.

28.0 DISCLAIMER OF REPRESENTATIONS AND WARRANTIES

EXCEPT AS W R E S S L Y PROVIDED UNDER THIS AGREEMENT, NO **PARTY** MAKES OR RECEIVES ANY **WARRANTY**, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, FUNCTIONS AND PRODUCTS IT PROVIDES UNDER **OR** CONTEMPLATED BY THIS AGREEMENT AND THE PARTIES DISCLAIM THE IMPLIED WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.

29.0 CANCELLATION CHARGES

Except **as** expressly set forth in this Agreement, no cancellation charges shall apply for canceling a particular service or network element

30.0 NON-SEVERABILITY

30.1 **The** services, arrangements, Interconnection, Network Elements, terms and conditions of this Agreement were mutually negotiated by the Parties **as** a total arrangement and are intended to be non-severable, subject only to **Section** 39 of **this** Agreement.

30.2 Nothing in this Agreement shall be construed as requiring or permitting either Party to contravene any mandatory requirement of federal or state Law, or any regulations or orders adopted pursuant to **such** Law.

31.0 INDEMNIFICATION

31.1 With respect to **all** matters under this Agreement other than Wholesale Services (which shall be governed by applicable tariffs), to the extent not prohibited by applicable Law, each Party (**the** Indemnifying Party) shall indemnify and hold **harmless** the other Party (**"Indemnified Party"**) from and against **loss**, cost, claim, liability, damage, and expense (including reasonable attorney's fees) to third parties for.

- (a) damage to tangible personal property or for personal injury proximately caused by the negligence or willful misconduct of the Indemnifying Party, *its* employees, agents or contractors; and
- (b) claims for libel, slander, infringement of copyright arising from the material transmitted over the Indemnified **Party's** facilities arising from the Indemnifying Party's own communications or the communications of such Indemnifying Party's Customers; and
- (c) claims for infringement of patents arising from combining the Indemnified Party's facilities or services with, or the use of the Indemnified Party's services or facilities in connection with facilities of the Indemnifying Party.

31.2 The Indemnified Party will notify the Indemnifying Party promptly in writing ~~of~~ any claims, lawsuits, or demands by third parties for which the Indemnified Party alleges that the Indemnifying Party **is** responsible under this Section, and, if requested by the Indemnifying Party, will tender the defense of such claim, lawsuit or demand. In the event the Indemnifying Party does not promptly assume or diligently pursue the defense ~~of~~ the tendered action, then the Indemnified Party may proceed to defend or settle said action and the Indemnifying Party shall hold harmless the Indemnified Party from any **loss**, cost, liability, damage and expense. In the event the Party otherwise entitled to indemnification from the other elects to decline such indemnification, then the Party making such an election may, at its own expense, assume defense and settlement of the claim, lawsuit or demand. The Parties will cooperate in every reasonable manner with the defense or settlement ~~of~~ any claim, demand, or lawsuit.

32.0 LIMITATION ~~OF~~ LIABILITY

32.1 Except (i) as otherwise provided in Section 31 of this Agreement, (ii) to the extent that appropriate remedies are agreed to **by** the Parties or ordered by the PSC pursuant to Section 33 ~~of this Agreement~~, and/or (iii) to the extent that sanctions are ordered pursuant to Section 37 of this Agreement, no liability shall attach to either Party, its parents, subsidiaries, affiliates, agents, servants or employees for any cost, expense, claim, liability, damage, expense or other **Loss** in the absence of gross negligence or willful misconduct.

32.2 Except (i) as otherwise expressly provided in Section 31 of this Agreement, (ii) to the extent that appropriate remedies are agreed to **by** the Parties or ordered by the PSC pursuant to Section **33** ~~of this Agreement~~, and/or (iii) to the extent that sanctions are ordered pursuant to Section 37 ~~of this Agreement~~, no Party shall be liable to the other Party for any cost, expense, claim, liability, damage, expense or other **Loss** caused by the conduct of the

other Party, ~~the~~ other Party's agents, servants, contractors or others acting in aid or concert with ~~the~~ other Party.

32.3 Except (i) to the extent that sanctions are ordered by the PSC pursuant to Attachment ADR of this Agreement, and/or (iii) to the extent that appropriate remedies expressly including Consequential Damages are agreed to by ~~the Parties~~ or ordered by the PSC pursuant to Section 33 ~~of~~ this Agreement, in no event shall either Party ~~have any~~ liability whatsoever to the other Party for any indirect, special, consequential, incidental or punitive damages, including, but not limited to ~~loss of~~ anticipated profits or revenue or other economic loss in connection with or arising from anything said, omitted or done hereunder (collectively, 'Consequential Damages'), even if the other Party has been advised of the possibility ~~of~~ such damages.

32.4 Except (i) as otherwise provided in Section ~~31~~ of this Agreement and/or (ii) to ~~the~~ extent that appropriate remedies are agreed to by the Parties or ordered by ~~the~~ PSC in accordance with Section 33 ~~of~~ this Agreement, 'each Party's liability to the other Party for any Loss relating ~~to~~ or arising out of any negligent act or omission in its performance ~~of~~ this Agreement, whether in contract or in tort, shall be limited to the amount that ~~is~~ or would have been charged to the other Party by such negligent or ~~breaching~~ Party for the specified service(s) or function(s) not performed or improperly performed, and only for the period of time such service or function ~~was~~ not performed or improperly performed.

33.0 LIQUIDATED DAMAGES AND SERVICE QUALITY STANDARDS FOR SPECIFIED ACTIVITIES

33.1 The Parties acknowledge that the PSC ~~has initiated~~ Service Quality Proceeding in which it is considering the establishment ~~of~~ generic service standards and possible damages to the extent such standards are not met. At its option, ANTC may elect in its entirety, and ~~subject to all terms,~~ conditions and other limitations as may be applicable, to incorporate and replace such decision into this Agreement in lieu of this Section 33 and Attachment ~~SQ~~ of this Agreement. ~~The Parties expressly acknowledge that this provision resulted from good faith negotiations by the Parties in an attempt to resolve issues raised by ANTC in its petition filed for arbitration under Section 252(b) of the Act~~

33.2 The following service standards and liquidated damages shall apply until a decision is reached in the Service Quality Proceeding addressing service standards, parity and liquidated damages. When a final decision is issued in the Service Quality Proceeding, at ANTC's option, the Parties shall amend this Agreement to incorporate that ruling (except where specified). The Parties shall meet and negotiate in good faith to establish contract language

reflecting the outcome in the Service Quality Proceeding within thirty ~~(30)Days~~ of the release of the ruling: If the Parties are unable to agree on appropriate language within thirty ~~(30)Days~~ of their first meeting, the Parties agree to submit any dispute for resolution under the provisions set forth in Attachment ADR.

33.3 NYNEX will provide ANTC with service that is at least equal in quality to that provided by NYNEX to itself or any subsidiary or affiliates; provided however, that the level of service it provides shall be no worse than NYNEX provides itself or any subsidiaries or affiliates as of the Effective Date of this Agreement. For purposes of this section, the level of service that **NYNEX** provides itself as of the Effective Date of this Agreement shall mean the service level provided in calendar year 1996, if such data exists, or if such data does not exist, the first twelve ~~(12)~~month period for which data is compiled.

33.4 NYNEX agrees to measure and track service quality and to provide monthly reports to ANTC in the form contained in Attachment SQ.

33.5 In the event that NYNEX fails to conform to the performance standards set forth in this section or in Attachment **SQ**, ANTC may request, in addition to any other remedies, and NYNEX shall perform and deliver to **ANTC**, a root-cause analysis of the reasons for NYNEX's failure to conform, and NYNEX shall correct said cause as soon as reasonably possible.

33.6 Liquidated Damages

33.6.1 Certain Definitions. When used in this Section **33.6**, the following terms shall have the meanings indicated:

33.6.1.1 "Specified Performance Breach" means the failure by NYNEX to meet the incident-based or parity-based Liquidated Damages performance standards set forth herein or in Attachment SQ for any of the Specified Activities as defined below.

33.6.1.2 "Specified Activity" means (i) an appointment for new or changed service order that is missed by NYNEX as a result of NYNEX's actions and not caused by the customer's actions ('Missed Installation Appointments'); (ii) installations completed within five ~~(5)~~business days from the receipt of a valid order; and (iii) service outage over twenty four ~~(24)~~Hours for POTs service, Wholesale Service, and UNEs, nine (9) or less per order. ,

33.6.2 Specified Performance Breach. In recognition of the ~~(i)~~loss of customer opportunities, revenues and goodwill which **ANTC** might sustain in the event of a Specified Performance Breach; (ii) the uncertainty, in the event of such a Specified Performance Breach, of ANTC having available to it customer opportunities similar to those opportunities currently available to ANTC; and (iii)

the difficulty of accurately ascertaining the amount of damages ANTC would sustain in the event of such a Specified Performance Breach, NYNEX agrees to pay ANTC, subject to Section 33.6.4 below. Liquidated Damages as set forth in Section 33.7 below in the event of the occurrence of a Specified Performance Breach.

33.6.3 Liquidated Damages. ANTC and NYNEX agree and acknowledge that (i) the Liquidated Damages are not a penalty and have been determined based upon the facts and circumstances of ANTC and NYNEX at the time of the negotiation and entering into of this Agreement, with due regard given to the performance expectations of each Party, (ii) the Liquidated Damages constitute a reasonable approximation of the damages ANTC would sustain if its damages were readily ascertainable; and (iii) ANTC shall not be required to provide any proof of the Liquidated Damages. Except as set forth in this Agreement, the Liquidated Damages shall be the sole and exclusive remedy of ANTC under this Agreement for NYNEX's failure to meet any Performance Standard as described in this section or in Attachment SQ.

33.6.4 Limitations. In no event shall NYNEX be liable to pay the Liquidated Damages if NYNEX's failure to meet or exceed any of the Performance Criteria is caused, directly or indirectly, by a Delaying Event. A "Delaying Event" means (i) a failure by ANTC to perform any of its obligations set forth in this Agreement (including, without limitation, the Implementation Schedule); (ii) any delay, act or failure to act by ANTC or a customer, agent or subcontractor of ANTC; (iii) any Force Majeure Event; or (iv) such other delay, act or failure to act as upon which the Parties may agree. If a Delaying Event (i) prevents NYNEX from performing or remedying a Specified Activity [as the case may be], then such Specified Activity shall be excluded from the calculation of NYNEX's compliance with the Performance Criteria, or (ii) only suspends NYNEX's ability to timely perform or remedy [as the case may be] the Specified Activity, the applicable time frame in which NYNEX's compliance with the Performance Criteria is measured shall be extended on an hour-for-hour or day-for-day basis, as applicable, equal to the duration of the Delaying Event

33.7 Performance Standards

33.7.1 Incident-based standards. Subject to the limitations set forth in Subsection 33.6.4, NYNEX shall pay as Liquidated Damages the following amounts for each Missed Installation Appointment caused by NYNEX's action and for each day that a resold service or unbundled network element is out of service for more than twenty four (24) hours:

33.7.1.1 Missed Installation Appointments. For resold services and, unbundled network elements, NYNEX shall pay ANTC as Liquidated Damages (i) twenty five percent (25%) of the applicable non-recurring

charges for the first Missed Installation Appointment relating to a specific ~~service~~ order; (ii) an additional 35 percent (35%) of the applicable non-recurring charges for the second Missed Installation Appointment relating to a specific service order; and (iii) the remaining 40 percent (40%) of the applicable non-recurring charges for the third Missed Installation Appointment relating to a specific service order. An appointment shall be considered missed when an order is not completed by the appointed time due to NYNEX's fault. ~~Excluded~~ from Missed Appointments ~~will~~ be Customer misses, where the customer (or ANTC) is not ready or required access is not available

33.7.1.2 Out of Service Over 24 Hours. For resold services and unbundled network elements (excluding interconnection trunks), NYNEX shall pay ANTC as Liquidated Damages 1/30 of the applicable monthly recurring charges for each day relating to an incident in which service is interrupted for greater than twenty four (24) hours. For purposes of this calculation, an ~~out~~ of service incident is ~~considered~~ to begin when it is properly reported by ANTC to NYNEX and an ANTC test has been done by ANTC and the diagnosis is provided to NYNEX. NYNEX defines out of service as when an end user indicates ~~one~~ or more ~~of~~ the following conditions: No dial tone, can not be called, can not call out.

33.7.1.3 Interconnection Trunks. NYNEX shall pay ANTC 2s Liquidated Damages according to the schedule set forth in Section 33.7.1.4 following. Excluded from Missed Appointments will be Customer misses, where ANTC is not ready or required access is not available. Also excluded will be Trunks missed when Trunks exceed the annual forecast by over five percent (5%) in the specific location,

33.7.1.4 Firm Order Commitment ("FOC"). For interconnection trunks, NYNEX shall pay ANTC as Liquidated Damages for each FOC not sent by NYNEX to ANTC within ten (10) business days ~~of~~ receipt of a valid and complete LSR, twenty (20%) percent ~~of the~~ applicable non-recurring ordering charge. This provision shall apply until the PSC issues its ruling in the Service Quality Proceeding.

Days Past Due	Damages per (T1) Trunk Missed
1-3 business days	\$240
4-7 business days	\$475
each additional day	\$30

performance that NYNEX provides to its own end user customers as of the Effective Date of this Agreement

33.7.2.1 The levels of performance provided by NYNEX to itself and to ANTC will be determined annually based on the performance reports furnished to ANTC and the PSC. If the reported level of performance for any parity category listed in Appendix E that NYNEX provided to itself is better than the level set forth in Appendix B, the improved performance level for the preceding year shall replace the performance level contained in Appendix B for the following year, and the Liquidated Damages schedule will be adjusted accordingly.

33.7.2.2 NYNEX shall pay ANTC for deviations from parity in accordance with the payment schedule indicated in Appendix B within sixty (60) Days after the end of each anniversary of the Effective Date of this Agreement

33.8 ANTC shall pay fees as set forth in the Pricing Attachment for dispatches in error or falsely directed dispatches, dispatches where the trouble is a customer or ANTC caused trouble, where NYNEX dispatches a technician but does not gain access to the customer premises within 10 minutes, or where there is ultimately no trouble found after ANTC reports a trouble and NYNEX dispatches a person.

33.9 Nothing in this Section 33 shall in any way limit the Parties' duties and/or obligations under Section 26.9 of this Agreement

34.0 REGULATORY APPROVAL

The Parties understand and agree that this Agreement will be filed with the PSC and may thereafter be filed with the FCC. Each Party covenants and agrees to support approval of this Agreement by the PSC or the FCC without modifying its terms, subject to: (1) either Party's rights under Section 39 of this Agreement, and (2) either Party's reservation of its rights to judicial review of the approval of the Agreement or any clause therein. In the event the PSC or FCC rejects this Agreement in whole or in part, the Parties agree to meet and negotiate in good faith to arrive at a mutually acceptable modification of the rejected portion(s). Notwithstanding the above, the Parties reserve the right to seek regulatory relief and otherwise seek redress from each other regarding performance and implementation of this Agreement

This agreement is subject to change or modification as may be required by a regulatory authority or court in the exercise of its lawful jurisdiction or as may be required by either Party based on any significant change in FCC or PSC rules which may impact the provision of Unbundled Network Elements,

Wholesale Services and other facilities and services provided under this Agreement or the rights and obligations of the Parties under the Act. The Parties shall use best efforts to negotiate in good faith revisions to this Agreement to incorporate any changes or modifications as may be required under this subsection. **ANTC** shall have a reasonable time to modify or redeploy its network or operations to reflect **such** changes or modifications.

35.0 FORCE MAJEURE

35.1 Force Majeure. Neither Party shall be responsible for delays or failures in performance of any part of this Agreement resulting from acts or occurrences beyond the reasonable control of such **Party**, regardless of whether such delays or failures in performance were foreseen or foreseeable as of the date of this Agreement, including, without limitation: adverse weather conditions, riot, sabotage, volcano, military authority, fire, explosion, power failure, acts of God, war, revolution, civil commotion, or acts of public enemies; any law, order, regulation, ordinance or requirement of any government or legal body; or labor unrest, including, without limitation, strikes, slowdowns, picketing or boycotts; or delays caused by the other Party or by other service or equipment vendors; or any other circumstances beyond the Party's reasonable control (collectively, a 'Force Majeure Event'). In **such** event, the affected Party shall, upon giving prompt notice to the other Party, be excused from such performance on a day-to-day basis to the extent of **such** interference (and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis to the extent such Party's obligations relate to the performance so interfered with). **The** affected Party shall use its best efforts to avoid or remove the cause(s) of non-performance and both Parties shall proceed to perform with dispatch once the cause(s) are removed or cease.

35.2 The Parties shall cooperate to limit the impact of a Force Majeure Event. Such cooperation shall include taking **such** actions as set forth in the Joint Grooming Plan and providing advance warning of a potential Force Majeure Event, if possible.

36.0 CONFIDENTIALITY

36.1 Confidentiality.

36.1.1 Any information such as specifications, drawings, sketches, business information, forecasts, models, samples, data, computer programs and other software and documentation of one Party (a 'Disclosing Party') that is furnished or made available or otherwise disclosed to the other Party or any of its employees, contractors, agents or Affiliates (its 'Representatives' and with a Party, a 'Receiving Party') pursuant to this Agreement ('Proprietary Information') shall be deemed the property of the

Disclosing Party. Proprietary Information; if written, shall be marked 'Confidential' or "Proprietary" or by other similar notice, and, if oral or visual, shall be confirmed in writing as confidential by the Disclosing Party to the Receiving Party within ten (10) Days after disclosure. Unless Proprietary Information was previously **known** by the Receiving Party to be free of any obligation to keep it confidential, or has been or is subsequently made public by an act not attributable to the Receiving **Party**, or is explicitly agreed in writing not to be regarded as confidential, it (i) shall be held in confidence by each Receiving **Party**; (ii) shall be disclosed to only those persons who have a need for it in connection with the provision **of** services required to fulfill this Agreement and shall be used only for such purposes; and (iii) may be used for other purposes only upon such terms and conditions as may **be** mutually agreed to in advance of use in writing by the Parties. Notwithstanding the foregoing sentence, **a** Receiving Party shall be entitled to disclose or provide Proprietary Information as required by any **governmental** authority or applicable law only in accordance with Section **36.1.2**.

36.1.2 If any Receiving Party is required by any governmental authority or by applicable law to disclose any Proprietary Information, then such Receiving Party shall provide the Disclosing Party with written notice **of such** requirement **as** soon as possible and prior to such disclosure. The Disclosing Party may then either seek appropriate protective relief from all or part **of such** requirement or, if it fails to successfully do **so**, it shall be deemed to have waived the Receiving Party's compliance with this Section 36 with respect to all or part **of such** requirement. The Receiving Party shall use all commercially reasonable efforts to cooperate with the Disclosing Party in attempting to obtain any protective relief which such Disclosing Party chooses to obtain.

36.1.3 In the event of the expiration or termination of this Agreement for any reason whatsoever, each Party shall return to the other Party or destroy all Proprietary Information and other documents, work papers and other material (including all copies thereof) obtained from the other Party **in** connection with this Agreement and shall use all reasonable efforts, including instructing its employees and others who have had access to such information, to keep confidential and not to use any such information, unless such information **is now**, or is hereafter disclosed, through no act, omission or fault of such Party, in any manner making it available to the general public. Either Party shall be permitted to request one copy **of** returned Proprietary Information (which shall remain confidential and subject to the protections set **forth** in this Section) as necessary to document its performance **of** its obligations under this Agreement.

36.2 NYNEX shall establish appropriate screening mechanisms to ensure that information provided by ANTC or ANTC's customers for **the** purpose **of** ordering, maintenance or repair **is** not used for any marketing purpose or disclosed to anyone in a marketing capacity without the express written approval **of** ANTC. No Party shall, without obtaining the prior written consent of the Party

with proprietary rights thereto, use such Party's Proprietary Information for any purpose other than those set forth herein or for discussions between the Parties, internal planning in connection with this Agreement, the protection of its rights and the performance of its duties and obligations under **this** Agreement, and the provision of other NYNEX services to ANTC.

36.3 The Parties shall maintain in strict confidence all Proprietary Information for at least a period of five (5) years from the date of its expiration or termination (including all extensions thereto). At no time shall the information be disclosed to a competitor of the other Party (known to be such after reasonable inquiry).

36.4 The Parties acknowledge that any disclosure or misappropriation of Confidential Information in violation of this Agreement could cause irreparable harm, the amount of which may be extremely difficult to determine, thus potentially making any remedy at law or in damages inadequate. Each Party, therefore, agrees that the other Party shall have the right to apply to any court of competent jurisdiction for an order restraining any breach or threatened breach of this Section and for any other equitable relief as such other Party deems appropriate. This right shall be in addition to any other remedy available in law or equity.

36.5 The Parties will treat Customer Proprietary Information in accordance with Section 222 of the Act and any FCC regulations issued pursuant thereto.

37.0 DISPUTE RESOLUTION

37.1 Disputes arising out of the implementation, enforcement, or provisioning of services pursuant to this Agreement shall be addressed as set forth in Attachment ADR, except as otherwise provided in Section 37.2.

37.2 Disputes involving amounts billed (other than with respect to Wholesale Services) shall be addressed as follows:

(a) If any portion of an amount due to a Party (the "Billing Party") under this Agreement is subject to a dispute between the Parties, the Party billed shall within thirty (30) Days of its receipt of the invoice containing such disputed amount give notice to the Billing Party of the amounts it disputes ("Disputed Amounts") and include in such notice the specific details and reasons for disputing each item. The billed Party shall pay when due (i) all undisputed amounts to the Billing Party and (ii) all Disputed Amounts into an interest bearing escrow account with a third party escrow agent mutually agreed upon by the Parties, except, however, if a Disputed Amount is less than five thousand dollars (\$5,000) in any

given invoice, the Parties agree that the amount does not have to be placed in an escrow account.

(b) If the Parties are unable to resolve the issues related to the Disputed Amounts in the normal course of business after delivery to the Billing Party of notice of the Disputed Amounts, each of the Parties shall appoint a designated official who has authority to settle the dispute. The designated officials shall meet as often as they reasonably deem necessary in order to discuss the dispute and negotiate in good faith in an effort to resolve such dispute. The specific format for such discussions will be left to the discretion of the designated officials, however all reasonable requests for relevant information made by one Party to the other Party shall be honored.

(c) If the Parties are unable to resolve issues related to the Disputed Amounts after referral of the dispute pursuant to Section 37.2(b) of this Agreement, then either Party may elect to use the dispute resolution process set forth in Attachment ADR

(d) Any undisputed amounts not paid when due shall accrue interest from the date such amounts were due at the lesser of: (i) one and one-half percent (1 1/2%) per month or (ii) the highest rate of interest that may be charged under applicable law. Any refunds owed by a Billing Party shall accrue interest from the date such amounts were paid to the Billing Party at same rate of interest set forth in this subsection. With respect to disputed amounts that have been placed in an escrow account pursuant to subsection 37.2(a), neither Party shall owe any interest upon resolution of the dispute but rather shall recover the amounts owed and any proportionate interest earned on such amounts in the escrow account.

(e) Remedies for Non-Payment In the event of non-payment by either Party of undisputed amounts due and payable under this Agreement, the other Party shall have available to it all remedies set forth in this Agreement and in the applicable NYPSC Tariffs, subject to the continuing jurisdiction of the PSC.

(f) Nothing herein shall limit the time under applicable Law within which either Party may dispute any bill, it being understood that payment of any amounts under this section, unless otherwise indicated, does not constitute a waiver of either Party's rights under applicable Law to contest its obligation to pay any amounts allegedly owed under this Agreement.

37.3 The Parties agree that all negotiations pursuant to this Section 37 shall remain confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and state rules of evidence.

38.0. SECTION 252(i) OBLIGATIONS

38.1 Section 252(i) Obligations. To the extent required by Law, if either Party enters into an agreement (the "Other Agreement") approved by the PSC or FCC pursuant to Section 252 of the Act which makes available in the State of New York any interconnection, service, or network element to another requesting Telecommunications Carrier, including itself or its affiliates, such Party shall make available to the other Party such interconnection, service, or network element upon the same terms and conditions as those provided in the Other Agreement. Nothing herein shall expand or otherwise change the Parties' respective rights and obligations under Section 252(i) of the Act.

39.0 UNIDENTIFIED CHARGES

39.1 Subject to Subsection 39.2 below and the continuing jurisdiction of the PSC, **NYNEX** may not impose any charge on ANTC for Unbundled Network Elements, Wholesale Services and other facilities and services as provided in this Agreement that are not identified in the Pricing Attachment or elsewhere herein, unless agreed to by the Parties. The Pricing Attachment shall be modified as required by the PSC and may be modified from time to time upon mutual agreement.

39.2 Nothing in this Agreement shall affect or limit: (i) **NYT's** right with respect to a new element or service not offered to ANTC on the Effective Date of this Agreement, or (ii) **NYT's** right to modify, restructure or change an existing element or service and to charge ANTC such rates as approved by the PSC for such modified, restructured or altered element or service. If the PSC approves different rates than those set forth in the Pricing Attachment, unless otherwise agreed to by the Parties herein, the rates established by the PSC shall become the rates established herein. The Parties agree that those rates shall be applied prospectively only, unless otherwise ordered by the PSC.

40.0 AUDIT RIGHTS

40.1 Upon reasonable notice and subject to the Parties' confidentiality obligations to its other customers and reasonable security precautions, either Party may audit the other Party's books, records (electronic or otherwise) and other documents that do or should contain information regarding any obligation arising under this Agreement. Either Party may conduct such an audit once annually. The Party requesting an audit may employ **such** assistance as it deems desirable to conduct such audits (such as an outside auditor), except for the on-site presence of **attorneys** at an audit, **so** long as the party providing assistance agrees to be bound by a confidentiality agreement and to the terms of Section 36 of this Agreement. Either Party may also conduct an audit for the purpose of evaluating the accuracy of invoices presented for reciprocal

compensation, or the true up of ~~INP~~ traffic, pursuant to the same terms and conditions set forth in this Section.

40.2 The audited Party shall cooperate fully in any such audit, providing reasonable access at a mutually agreed upon location to any books, records, and documents and all personnel having information pertinent to the audit. No original **books** and **records** of the audited Party may leave the premises.'

40.3 Any dispute concerning audit results and recommendations shall be referred to the appropriate official in the Parties' financial organizations for resolution. If they are unable, within ~~twenty~~ (20) Days of a referral, to resolve the subject dispute, all unresolved matters shall be resolved pursuant to the procedures set forth in Attachment ADR

41.0 MISCELLANEOUS

41.1 Authorization.

41.1.1 NYT ~~is~~ a corporation duly organized, validly existing and in good standing under the laws ~~of~~ the State of New York and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder, subject to necessary regulatory approval.

41.1.2 ANTC ~~is~~ a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder, subject to necessary regulatory approval. ANTC represents that it intends to be a provider of telephone exchange service to subscribers offered over its ~~own~~ telephone exchange service facilities, over a combination of its ~~own~~ facilities and network elements purchased from NYNEX or another carrier, or in combination with the resale of the telecommunications services of other carriers.

41.2 Compliance. Each Party represents that it shall comply with all applicable federal, state, and local laws, rules, and regulations applicable to its performance under this Agreement

41.3 Compliance with the Communications Assistance for Law Enforcement Act of 1994 (*CALEA*). Each Party represents that any equipment, facilities or services provided to the other Party under this Agreement shall comply with CALEA. Each Party shall indemnify and hold the other Party harmless from any and all penalties imposed upon the other Party for such noncompliance and shall at the non-compliant Party's sole cost and expense, modify or replace any equipment, facilities or services provided to the other Party under this Agreement to ensure that such equipment, facilities and services fully comply with CALEA,

41.4 Independent Contractor. Neither this Agreement, nor any actions taken by NYNEX or ANTC in compliance with this Agreement, shall be deemed to create an agency or joint venture relationship between ANTC and NYNEX, or any relationship other than that of purchaser and seller of services.

Neither this Agreement, nor any actions taken by NYNEX or ANTC in compliance with this Agreement, shall create a contractual, agency, or any other type of relationship or third party liability between NYNEX and ANTC's Customers or **others**.

41.5 Governing Law. For all claims under this Agreement that are based upon issues within the jurisdiction (primary or otherwise) of the FCC, the exclusive jurisdiction and remedy for all such claims shall be as provided for by the FCC and the Act. For all claims under this Agreement that are based upon issues within the jurisdiction (primary or otherwise) of the PSC, the exclusive jurisdiction for all such claims shall be with the PSC, and the exclusive remedy for such claims shall be as provided for by such PSC. In all other respects, this Agreement shall be governed by the domestic laws of the State of **New York** without reference to conflict of law provisions.

41.6 Taxes. Each Party purchasing services hereunder shall pay or otherwise be responsible for all federal, state, or local sales, use, excise, **gross** receipts, transaction or similar taxes, fees or surcharges levied against or upon such purchasing Party (or the providing Party when such providing Party is permitted to pass along to the purchasing Party **such** taxes, fees or **surcharges**), except for any tax on either Party's corporate existence, status or income. Whenever possible, these amounts shall be billed as a separate item on the invoice. To the extent a sale is claimed to be eligible for resale tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate **as** authorized or required by statute or regulation by the jurisdiction providing said resale tax exemption. Failure to timely provide said resale tax exemption certificate will result in no exemption being available to the purchasing Party until the certificate is provided.

41.7 Non-Assignment. This Agreement shall be binding upon both Parties and any **affiliate** agreed to in writing and shall continue to be binding upon all such entities regardless of any subsequent **change** in their ownership. Each Party covenants that, if it sells or otherwise transfers to a third party its telephone exchange and exchange access network facilities within the State of **New York**, or any portion thereof, to a third party, it will require as a condition of such transfer that the transferee agree to be bound by **this** Agreement with respect to services provided over the transferred facilities. Except as provided in this paragraph, neither Party may assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a third party without the

prior written consent of the other Party which consent will not be unreasonably withheld; provided that either Party may assign this Agreement to a corporate ~~Affiliate~~ or an entity under its common control or an entity acquiring all or substantially all of its assets or equity by providing prior written notice to the other Party of such assignment or transfer. **Any** attempted assignment or transfer that is not permitted **is** void ab initio. Without limiting the generality of the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors and assigns.

41.8 Non-Waiver. Failure of either Party to insist on performance of any term or condition of this Agreement or to exercise any right or privilege hereunder shall not be construed as a continuing or future waiver of **such term**, condition, right or privilege.

41.9 Notices. Notices given by one Party to the other Party under **this** Agreement shall be in writing and shall be (i) delivered personally, (ii) delivered by express delivery service, (iii) mailed, certified mail or first class **U.S.** mail postage prepaid, return receipt requested or (iv) delivered by telecopy (notices delivered by telecopy will be followed by notice by first class mail) to the following addresses of the Parties:

To ANTC:

Maureen Swift
Director of Regulatory Affairs
ACC National Telecom Corp.
400 West Ave,
Rochester, NY 14611
Attn: Director of Regulatory Affairs
Facsimile: (716) 987-3045

To NYNEX

Jacob J. Goldberg
V.P. - Telecorn Industry Services
Bell Atlantic - New York
1095 Avenue of Americas
40th Floor
New York, NY 10036
Attn: V.P. - Telecorn Industry Services
Facsimile: **(212) 597-2585**

or to **such** other address as either Party shall designate by proper notice. Notices will be deemed given as of the earlier of (i) the date of actual receipt, (ii) the ~~next~~ business day when notice is sent via express mail or personal delivery,

- (iii) three (3) Days after mailing in the case of first class or certified U.S. mail or
(iv) on the date set forth on the confirmation in the case of telecopy.

41.10 Publicity and Use of Trademarks or Service Marks. Neither Party nor its subcontractors or agents shall use the other Party's trademarks, service marks, logos or other proprietary trade dress in any advertising, press releases, publicity matters or other promotional materials without such Party's prior written consent

41.11 Joint Work Product. This Agreement is the joint work product of the Parties and has been negotiated by the Parties and their respective counsel and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.

41.12 No Third Party Beneficiaries; Disclaimer of Agency. This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein express or implied shall create or be construed to create any third-party beneficiary rights hereunder. Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name of or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

41.13 No License. No License under patents, copyrights or any other intellectual property right is granted by either Party or shall be implied or arise by estoppel with respect to any transactions contemplated under this Agreement, except a limited right to use subject to the following: ANTC agrees that the rights granted by NYNEX hereunder shall, where applicable, be subject to the restrictions, if any, contained in any current software license agreements between NYNEX and NYNEX's software vendors.' From and after the Effective Date of this Agreement, NYNEX shall not enter into any software license agreements that would materially impair NYNEX's ability to perform its obligations hereunder, provided, however, that ANTC acknowledges that the functions and features made available to ANTC hereunder through the use of third party proprietary products may involve additional terms and conditions and/or separate licensing to ANTC. With respect to any agreements entered into after the Effective Date, NYNEX shall exercise reasonable efforts to avoid the imposition of any unreasonable restrictions in such agreements that may materially impair ANTC's use of the software. Where NYNEX provides ANTC with software features which NYNEX has a right to use but has not deployed for its own retail customers, ANTC shall pay to NYNEX its proportionate share,

or other communications. This Agreement may only be modified by a writing signed by an officer of each Party.

41.18 Subject to PSC approval of NYT's tariff filing dated October 29, 1997, ANTC may use 2-wire other than signal grade loops connected to other than signal grade interoffice mileage to extend a loop from NYT's normal serving wire center to the POT Bay at ANTC's collocation multiplexing node to another NYT central office in the same LATA pursuant to the terms and conditions set forth in the NYPSC No. 900 tariff, section 1.2.b.29, **as** may be amended from time to time. The Parties agree that in the event NM is ordered by the Commission or the FCC to otherwise provision this service as an unbundled Network Element or combination thereof, NYT shall provide **such** service to ANTC on the **terms** and conditions required by **such** order.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives.

ACC NATIONAL TELECOM CORP.

By: [Signature]

Printed: Mae Squier-Dow

President - ACC National Telecom Corp.

Date: 11/11/97

NYT (d/b/a Bell Atlantic-New York)

By: [Signature]

Printed: Jacob J. Goldberg

Vice President - Telecom Industry Services

Date: 11/17/97

along with other similarly situated telecommunications carriers (including NYNEX to the extent NYNEX seeks to deploy such feature for its own retail end-users), all of NYNEX's costs and expenses incurred by NYNEX in providing such features. To the extent ANTC is the sole telecommunications carrier seeking to access that particular software feature, ANTC shall be responsible for one hundred percent (100%) of the costs, subject to ANTC's ability to recover a proportionate part of its costs from another telecommunications carrier (including NYNEX) which seeks to access that particular feature. The calculation of such costs and expenses shall be on an LCB basis. NYNEX shall provide reasonable assistance to ANTC to permit ANTC to recover a proportionate share of the fees and costs paid to NYNEX to deploy the particular software feature from a subsequent requesting telecommunications carrier or NYNEX to the extent NYNEX seeks to make such feature available to its retail customers.

41.14 Technology Upgrades. Nothing in this Agreement shall limit NYNEX's ability to upgrade its network through the incorporation of new equipment, new software or otherwise. NYNEX shall provide ANTC Mitten notice at least ninety (90) Days (or earlier if possible) prior to the incorporation of any such upgrades in NYNEX's network which NYNEX reasonably believes would materially impact ANTC's service or operations. If NYNEX is aware and can reasonably give ANTC notice at an earlier date, or if it gives notice to any other party at an earlier date, NYNEX shall provide ANTC notice at that time. ANTC shall be solely responsible for the cost and effort of accommodating such changes in its own network

41.15 Survival. The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement, including without limitation, Sections 6.7, 6.8, 24, 26.9, 27.2, 28, 29, 31, 32, 33, 36, 37, 40, 41.3, 41.10 and 41.13.

41.16 Scope of Agreement. This Agreement is intended to describe and enable specific Interconnection and access to unbundled Network Elements and compensation arrangements between the Parties. This Agreement does not obligate either Party to provide arrangements not specifically provided for herein.

41.17 Entire Agreement The terms contained in this Agreement and any Attachments, Exhibits, and other documents or instruments referred to herein, which are incorporated into this Agreement by reference, constitute the entire agreement between the Parties with respect to the subject matter hereof, superseding all prior understandings, proposals and other communications, oral or written. Neither Party shall be bound by any preprinted terms additional to or different from those in this Agreement that may appear subsequently in the other Party's form documents, purchase orders, quotations, acknowledgments, invoices

ATTACHMENT 1.0

CERTAIN TERMS AS DEFINED IN THE ACT

"Affiliate" means a person or entity that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person or entity. For purposes of this paragraph, the term "own" means to own an equity interest (or the equivalent thereof) of more than ten percent (10%).

"Dialing Parity" means that a person or entity that is not an Affiliate of a LEC is able to provide Telecommunications Services in such a manner that Customers have the ability to route automatically, without the use of any access code, their Telecommunications to the Telecommunications Services provider of the Customer's designation from among two (2) or more Telecommunications Services providers (including such LEC).

"Exchange Access" means the offering of access to Telephone Exchange Services or facilities for the purpose of the origination or termination of Telephone Toll Services.

"InterLATA Service" means Telecommunications between a point located in a local access and transport area and a point located outside such area.

"Local Exchange Carrier" means any person that is engaged in the provision of Telephone Exchange Service or Exchange Access. Such term does not include a person insofar as such person is engaged in the provision of a commercial mobile service under Section 332(c) of the Act, except to the extent that the FCC finds that such service should be included in the definition of such term.

"Network Element" means a facility or equipment used in the provision of a Telecommunications Service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a Telecommunications Service.

"Number Portability" means the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.

"Telecommunications" means the transmission, ~~between~~ or among points specified by the user, of information of the user's choosing, without change in the form or ~~content~~ of the information as sent and received.

"Telecommunications Carrier" means any provider of Telecommunications Services, except that such term does not include aggregators of Telecommunications Services (as defined in Section 226 of the Communications Act).

"Telecommunications Service" means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

"Telephone Exchange Service" means (a) service within a telephone Exchange within a connected system of telephone exchanges within the same exchange area operated to furnish subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (b) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and ~~terminate~~ a telecommunications service.

"Telephone Toll Service" means telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service.

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ATTACHMENT 4.0 Network Interconnection Attachment

LATA	ANTC A-IP	NYNEX N-IP	Activation Date
132 (Metro NY)			10/1/97**
134 (Albany)			■
136 (Syracuse)			★
138 (Binghamton)			★
140 (Buffalo)			★

* The Parties networks in these LATAs were interconnected prior to the effective date of this Agreement.

** This is the earliest date on which 'live' customers traffic between ANTC and NYNEX will occur.

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